

CHERYL WHITELAW

IBLA 95-484

Decided June 24, 1998

Appeal from a Decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void when service charges required for filing amendments to an exemption certification were not paid. CAMC 170868 et al.

Reversed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A mining claimant who filed documents in response to a notice from BLM that her small miner exemption application was incomplete was entitled to notice, under 43 C.F.R. § 3833.1-3(c) (1993), that she had failed to include payment of service charges required by 43 C.F.R. § 3833.1-4 (1993) before her claims could be declared abandoned and void pursuant to 43 C.F.R. § 3833.4(b) (1993).

APPEARANCES: Cheryl Whitelaw, Igo, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Cheryl Whitelaw has appealed from a May 11, 1995, Decision of the California State Office, Bureau of Land Management (BLM). The BLM Decision declared certain mining claims abandoned and void for failure to either pay required claim rental fees or qualify for exemption from fee payment under regulations implementing the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (1992 Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79.

On July 19, 1994, BLM notified Whitelaw of deficiencies in filings she had made claiming exemption from rental fee payments for a number of claims; pertinent to them, BLM's notice, entitled "Additional Information Requested," stated that:

If there has been a change of ownership, the transferring document (quitclaim deed), dated on or before August 31, 1993, must

be filed in this office. Pursuant to 43 CFR 3833.1-4(d), transfers of interest shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim. * * * In order to qualify for the exemption, the transfer of interest dated on or before August 31, 1993, and the \$5.00 per claim * * * service charge must be submitted to this office within 30 days from receipt of this Notice.

In response to this notice, on August 31, 1994, BLM received copies of two deeds from Whitelaw for two claims; no money was paid with this filing, however. The May 11, 1995, Decision found, concerning Whitelaw's response to BLM's 1994 notice, that:

The records show that [she] received the Notice in July of 1994 and responded by submitting the quitclaim deeds on August 31, 1994. However, [she] did not submit the \$5.00 per claim service fee required when filing quitclaim deeds. Therefore, the subject mining claims are hereby declared abandoned and void.

Whitelaw argues, however, that she filed a timely response to BLM's notice and that she enclosed the necessary \$10 filing fee. Alternatively, she argues that, even if the payment she enclosed was not, for some reason, received by BLM, she was nonetheless entitled to a timely notice of that fact from BLM, given the circumstances of this case, before any action was taken to void her claims. The case file shows a \$10 payment was received from Whitelaw on May 30, 1995.

The 1992 Act provides that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim." *Id.* at 1379. A mining claimant must either pay the rental fee or certify qualification for exemption from such payment and election to perform the assessment work to the Secretary by August 31, 1993. *Id.* at 1379. If there is a failure to qualify for the small miner exemption or pay the \$100 claim rental on or before August 31, 1993, affected claims are extinguished by operation of law. 43 C.F.R. § 3833.4(a)(2) (1993).

Under 43 C.F.R. § 3833.4(b) (1993), in cases where an application for fee waiver is incomplete, BLM may require a claimant to furnish additional information. The rule provides that a timely but incomplete fee waiver application

shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim * * * being deemed conclusively to be abandoned.

[1] While it is true that BLM's 1994 notice did mention there was a service charge for filing title correction documents, the only defects in Whitelaw's fee waiver application noted by the 1994 notice pertained to ownership matters; at the time the 1994 notice was sent, there was no service charge owing. The failure to pay service charges, unlike a failure to pay rental fees owed under the 1992 Act, was not an omission that subjects mining claims to extinguishment without prior notice. See 43 C.F.R. § 3833.1-3(c). That rule provides, concerning failure to make "full payment of service charges" such as those required to be paid by Whitelaw in this case, that such an omission is "curable." Id. Further, this regulation states that the consequence of such an omission is that documents, such as the two deeds filed here by Whitelaw, are to be recorded on the date initially received, "provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice." Id. It appears that is what happened here.

It was error to declare Whitelaw's claims abandoned and void because she did not pay the required service charge when she furnished the supplemental information requested by BLM. Since failure to pay the service charge was not itself an omission resulting in automatic claim forfeiture, BLM was obliged to follow 43 C.F.R. § 3833.1-3(c) and provide her with notice of the deficiency in her filing before finding her claims to be void. It appears on the record before us that Whitelaw treated BLM's Decision as though it were such a notice and filed the required \$10 service charge. The case file indicates, therefore, that the defect in her filing has now been cured, and that, all else being regular, her exemption certification should be approved.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed.

Franklin D. Amess
Administrative Judge

I concur.

James L. Burski
Administrative Judge

